



Montana Fish, Wildlife & Parks

Region 2
3201 Spurgin Road
Missoula, MT 59804
December 29, 2015

Dear Interested Citizens:

Thank you for your thoughtful reviews and comments on a proposal by Montana Fish, Wildlife and Parks (FWP) to purchase approximately 320 acres of wildlife habitat from Doug and Annette Rehbein, as an addition to the Fish Creek Wildlife Management Area in Mineral County.

Enclosed is a decision document in which FWP explains its rationale for recommending that the Fish & Wildlife Commission and the State Board of Land Commissioners approve this transaction as proposed. Upon completion of the public involvement process and by including this Decision Notice, FWP accepts the draft environmental assessment (EA) as final. The decision document also summarizes public comments on the proposed acquisition, and explains how FWP considered and incorporated these comments in formulating a recommendation.

FWP will request approval for the purchase of the subject lands at the monthly Fish & Wildlife Commission meeting scheduled for January 14, 2016, in Helena. FWP will also request approval from the State Board of Land Commissioners, tentatively at its regularly scheduled meeting on January 19, 2016, also in Helena. These meetings are open to the public, as are other regularly scheduled Commission and Land Board meetings.

Please feel free to contact me at 406-542-5500 with any questions you may have. Thank you for your interest and participation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Randy Arnold', written in a cursive style.

Randy Arnold
Regional Supervisor

DECISION NOTICE
FWP Purchase of a 320-Acre Addition to the
Fish Creek Wildlife Management Area
December 29, 2015

Proposal

Montana Fish, Wildlife and Parks (FWP) proposed to acquire a 320-acre addition to its Fish Creek Wildlife Management Area (FCWMA), through a purchase of land from Doug and Annette Rehbein. The property is a private inholding within the 34,721-acre FCWMA and is also bordered by lands owned by the Montana Department of Natural Resources and Conservation (DNRC), United States Forest Service (USFS), and 2 small private parcels.

This property was formerly owned by Plum Creek Timber Company (PCTC), and is one of several inholdings that had been sold to private buyers prior to the Nature Conservancy's acquisition of the PCTC lands in Fish Creek. The subject property includes approximately 1.3 miles of West Fork Fish Creek and its associated riparian corridor, as well as lower sections and confluence areas of Bear Creek (~0.6 mile), Trail Creek (~0.35 mile), and Winkler Gulch (~0.24 mile). In total, the property contains 72 acres of stream corridor, riparian areas, and associated wetlands. There are also 148 acres of adjacent upland habitat, important for elk and other wildlife species.

Management of the property would be under the guidance of the Fish Creek WMA and Fish Creek State Park Interim Preliminary Management Plan (MFWP 2009).

Public Review Process

FWP is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision based on this information. FWP released a draft environmental assessment (EA; "Rehbein Addition to Fish Creek Wildlife Management Area") for public review of this proposal on October 8, 2015 and accepted public comment until November 6, 2015.

Legal notices of the proposed addition and its Draft EA availability were published in the following newspapers (dates): *Independent Record* (Helena; October 8, 15), *Mineral Independent* (Plains; October 14, 21), and *Missoulian* (October 8, 15).

FWP mailed 39 copies of the EA, and emailed approximately 120 notifications of the EA's availability, to adjacent landowners and interested individuals, groups and non-FWP agencies. The EA was available for public review and comment on FWP's web site (<http://fwp.mt.gov/>, "Public Notices") beginning October 9 through November 6, 2015.

A public hearing to explain the project, answer questions and take public comment was held in Alberton on October 20 (6:30 p.m.) at the Alberton Community Center.

Summary of Public Comment

FWP received 32 emailed or written comments (Appendix A):

- 25 comments were from individuals (one of these comments represented 2 people);
- 6 comments were from organizations (Five Valleys Audubon, Hellgate Hunters & Anglers, Montana Chapter of Backcountry Hunters & Anglers, Ninemile Wildlife Workgroup, Shining Mountain Chapter of Montana Wilderness Association, and WestSlope Chapter of Trout Unlimited); and
- 1 comment was from an agency (Mineral County Commissioners).

Commenters (including the organizations and agency) were from the following Montana towns and locations: 11 from Missoula; 4 from Superior; 2 from Bozeman; one each from Alberton, Dillon, Emigrant, Hamilton, Helena, Huson-Ninemile-Alberton, Mineral County, Stevensville, Tarkio, Trout Creek, western Montana, and Montana; and 3 did not indicate a location.

For the official tally, a total of 28 commenters supported the acquisition, 3 commenters (all individuals) opposed the acquisition, and 1 commenter (Mineral County Commissioners) did not indicate support or opposition.

Additionally, the WestSlope Chapter of Trout Unlimited was the only entity to offer official public testimony at the public hearing, and they supported the acquisition (Appendix B). Since this group also emailed other comments (#6a and 6b), this testimony was considered along with those comments in Appendix A.

Public Hearing

Twelve members of the public attended the public hearing. The hearing provided a worthwhile and constructive forum for discussion during the question-and-answer (Q&A) portion of the meeting. (Attendees were reminded that comments they made during the Q&A portion were not counted in the official tally, and that there would be opportunity to make official comments during the public testimony portion of the hearing.)

Issues discussed during the Q&A pertained mostly to the Rehbein parcel and its management, although other questions were brought up in regards to overall management of the FCWMA and the agency's long-term plans for land acquisition in the area. Many recognized the property as having high value for wildlife, fish, and recreation. There was much interest in protecting this stretch of creek as a migratory corridor for native bull trout and westslope cutthroat trout. There was also recognition that the parcel provides good white-tailed deer habitat and hunting opportunities. As such, there were concerns about the property getting too much hunting pressure because of its accessibility. Some suggested the area should be reserved for disabled hunter access. The point was made that Mineral County has an aging demographic, which should be taken into consideration. There was discussion about the use of the gravel pit on the northeast corner of the property and the gates/fences that are on the property.

The question of revenues to Mineral County came up for discussion at the public meeting, and FWP repeated that the agency does make payments to the county in the same amount as the property taxes that would be assessed to a private landowner holding the same property. There was concern regarding the high purchase price in relation to the seemingly low taxable value. The concern was raised that the county could receive more tax revenue from a private landowner if that landowner were to develop the

property. Likewise, there were concerns about putting more land into public ownership in a county already largely dominated by public land. Alternatively, it was suggested that keeping the watershed healthy and open to the public will bring people in and be an economic opportunity to the county over the long-term. Any development and amenities for visitors were recommended to be focused down lower along the Interstate Highway 90 corridor near the mouth of Fish Creek.

Response to Public Comment

Below is a summary of representative *public questions, comments, and suggestions* and FWP responses. For ease of response, similar comments from different individuals are grouped together if they expressed a similar view. (Numbers in parentheses below correspond to the numbering of the individual commenters in Appendix A.)

Comment A: *Price seems high (#2). Curious what the price is and where the funding will come from (#8a). Concerns that property taxes are too low for a purchase price of 1.4 million (#20, 23).*

FWP Response: The purchase price is 1.4 million and is the appraised value of the property. The appraisal determined the Highest and Best use as Residential/Recreational. The proposed funding source would be \$1,050,000 from the U.S. Fish and Wildlife Service (Pittman-Robertson) and \$350,000 from Habitat Montana. FWP makes payments to the county in the same amount as the property taxes that would be assessed to a private landowner, as long as it is kept as Forest and/or Agriculture Lands. The property tax value is currently assessed as 223 acres of Forest Land and 97 acres of Ag Land. The value of Forest Land is determined by the State Legislature and the value of the Ag Land is determined by the Department of Agriculture, Natural Resources Conservation Service. Development of the property could result in increased property taxes for the county but could come with other costs and obstacles (see Comment H).

Comment B: *The Department has taken enough private land out of circulation (#1).*

FWP Response: In 2010, FWP acquired 40,175 acres from The Nature Conservancy to form the Fish Creek WMA (34,573 acres) and Fish Creek State Park (5,602 acres)¹. The Five Valleys Land Trust 148-acre addition to the WMA in early 2015 resulted in the WMA's current 34,721 acres. The property was formerly owned by Plum Creek Timber Company. The 148-acre addition in early 2015 and the Rehbein property were sold to private buyers prior to TNC's acquisition of the PCTC lands in Fish Creek. Under PCTC ownership the property was open for public use. FWP purchased the property for the long-term protection of fish and wildlife habitat and for the public to continue to be able to access and enjoy.

Comment C: *I do not agree with the planned limiting access to only hunters and anglers. Therefore request at least one existing logging road through the area be designated for hike, bike, and off-road vehicles such as ATV and snowmobile. Please provide some OHV/ATV trails in the WMA territories (#9).*

FWP Response: Access will be open for non-motorized recreation throughout the property, to include hiking, mountain biking, and horseback riding. Motorized access is allowed on the West Fork Fish Creek Road (Forest Road 7750) and Trail Creek Road (Forest Road 341). The property

¹ The Draft EA for The Fish Creek WMA and State Park acquisition may be viewed on FWP's webpage at http://fwp.mt.gov/news/publicNotices/environmentalAssessments/acquisitionsTradesAndLeases/pn_0081.html. The Decision Notice (DN) is at http://fwp.mt.gov/news/publicNotices/decisionNotices/pn_0423.html and the revised DN is at http://fwp.mt.gov/news/publicNotices/decisionNotices/pn_0427.html. All accessed 28 December 2015.

is small (320 acres) and other roads on the property are short and dead end. As part of developing a final management plan for Fish Creek WMA, FWP will be evaluating potential for OHV use.

Comment D: *It seems unwise and inconsistent that FWP would use chemical weed control and risk a spill in the “the last stronghold for bull trout in the middle Clark Fork region” (#10a).*

FWP Response: Spraying weeds is an important component of our overall habitat management program on the WMA. Weeds provide very little nutrition for native ungulates; therefore it is important to reduce weed density and encourage growth of native bunchgrasses and shrubs that are important forage for mule deer, white-tailed deer, and elk. Weed spraying is conducted by vehicle and helicopter and not in riparian areas near creeks and tributaries. Vehicle spraying occurs primarily along roads. As such, potential of a spill is unlikely but contractors are cognizant of potential for accidents and take appropriate caution. FWP believes the overall benefit of weed spraying outweighs the risk.

Comment E: *As soon as FWP acquires the property, the fences and signs should come down (#10b).*

FWP Response: All of the “Private Property, No Trespassing” signs will come down after the purchase of the property. The fences and gates, however, will remain in place to discourage off-road vehicles from driving down into the riparian corridor.

Comment F: *To put more private land into fwp hands gives the native americans another place to hunt when no one else has the opportunity (#20).*

FWP Response: Confederated Salish and Kootenai Tribal members are allowed to hunt on federal lands, primarily US Forest Service land. Tribal “hunnable” lands do not include fee title (private) properties or state-owned lands.

Comment G: *Concerns about FWP’s ability to maintain roads in Fish Creek (#20).*

FWP Response: FWP has been working from an MOU (Memorandum of Understanding) with the US Forest Service on maintenance of roads throughout Fish Creek WMA. After FWP receives the final road easement language between all agencies, a final MOU would be established. FWP is committed to road maintenance of FWP lands within the Fish Creek Watershed.

Comment H: *Due to several challenges, accomplishing a subdivision of the Rehbein property seems very unlikely. Since the property is not accessed by a county right-of-way, the owner would need to facilitate a road agreement that would create an unrestricted public road. The road segments of both Fish Creek Road and West Fork Fish Creek Road would need to be brought up to subdivision standards unless variances in the standards were granted. The developer must address safety concerns for emergency services, and adequate fire protection would be highly unlikely given the location. The rationale for purchasing the property should not reference subdivision potential without at least a number of qualifiers in regard to capital expense versus return on investment.*

FWP Response: FWP acknowledges and recognizes the challenges and costs of subdividing the Rehbein property. Subdivision may indeed be unlikely, given these challenges, but it remains a possibility. Additionally, since 2 existing land parcels are involved, each of those parcels could be developed (e.g., as a single-residence or small ranch, with associated buildings), without going through subdivision review. Since the land is not zoned, there are other possible divisions of the land that could be exempt from County subdivision review or approval.

Regional Supervisor's recommendation on FWP's purchase of the Rehbein addition to the Fish Creek WMA

This proposal for FWP to purchase the 320-acre property and add it to the Fish Creek WMA received overwhelming public support during the public review period. Supporters emphasized the benefits of protecting this important fish and wildlife corridor and public access that would accrue from the purchase. Therefore, I am pleased to recommend that FWP complete this purchase and manage it as part of the Fish Creek WMA.

The conversation with the local community has been an important outcome of this process. Some have had concerns about FWP's ability to manage more land in Fish Creek. Since acquiring Fish Creek WMA in June 2010, FWP has put tens of thousands of dollars to work on the ground toward noxious weed control and management. Roads have been repaired and maintained. Sedimentation has been reduced by storing segments of selected closed roads. The traditional open-road system has largely been maintained as open to motorized vehicle travel. FWP has operated a check station at the mouth of Fish Creek since 2011 to get a clear understanding of hunting patterns and observations. Numerous other management activities have been undertaken, and while much is left to be done, FWP is working hard to properly manage the Fish Creek WMA.

In the course of this latest public involvement process, FWP has had discussion with some Mineral County residents concerned about more private land going into public ownership in a county that is largely dominated by public lands. There are economic concerns about what this means as a lost opportunity for the County from revenue that may otherwise have been gained from a developed piece of property in private ownership. We acknowledge the economic challenges in the County and hope that we can continue to work together. We hope that by protecting the fish and wildlife resources this will be a benefit for the County in the long run. We appreciate how openly people have been willing to share their observations and perceptions, and we see some opportunities before us to address needs of mutual interest.

With the purchase in 2010, FWP implemented an interim management plan for Fish Creek WMA. FWP is now in the process of developing a final management plan. In May 2015, FWP offered a public tour of the WMA to discuss issues/concerns and collect ideas. Further information is currently being collected from hunters at the Fish Creek check station. A draft management plan will go out for public review and will be finalized in 2016. We look forward to continuing to work with Mineral County residents and other interested citizens and groups in developing this plan.



Randy Arnold
Region 2 Supervisor
Montana Fish, Wildlife & Parks

12-29-2015
Date